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November 29, 2005

Via Overnight Mail and ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: WAPT-DT, Jackson, Mississippi
MB Docket No. 05-317
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Dear Ms. Dortch:

On behalf of WAPT Hearst-Argyle Television, Inc. ("Hearst-Argyle"), permittee of Digital Television Station WAPT-DT, Jackson, Mississippi, this letter requests a waiver to prohibit satellite subscribers from obtaining signal tests of WAPT-DT's digital signal pursuant to Section 339(a)(2)(D)(vii) of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). The instant request is filed pursuant to the procedures set forth in the Commission's Public Notice in DA 05-2979 (Nov. 17, 2005).

WAPT-DT is the ABC affiliate located in the Jackson Designated Market Area ("DMA"). The Jackson DMA is ranked 89th among Nielsen Media's 210 television markets for the 2005-2006 television season. WAPT-DT has received a tentative digital channel designation of Channel 21,

which is WAPT-DT's allotted digital channel. *See* Public Notice, DA 05-2649 (Oct. 4, 2005). Accordingly, absent grant of the instant waiver request, effective April 30, 2006, satellite subscribers may request a signal test to demonstrate eligibility under SHVERA to receive a distant digital signal of a station affiliated with the same network as WAPT-DT.

Pursuant to **Section 339(a)(2)(D)(viii)(IV)** of the Act, Hearst-Argyle requests a waiver on the basis that WAPT-DT "experiences a substantial decrease in its digital signal coverage due to necessity of using [a] side-mounted antenna."

As certified in its Form 381 filing (FCC File No. BCERCT-20041105ABC), WAPT-DT intends to operate its post-transition DTV station based on its maximized facilities as authorized by its construction permit in FCC File No. BPCDT-19990915ATM. WAPT-DT is currently operating its DTV facility at maximum permissible power from a lower HAAT with a side-mounted antenna as authorized by Special Temporary Authority ("STA") in FCC File No. BMDSTA-20050701ADR. As previously explained to the Commission in WAPT-DT's request for waiver of the maximization deadline filed on July 1, 2005, it is physically impossible for Hearst-Argyle to install WAPT's DTV antenna at its maximized construction permit's HAAT of 332 meters because that space is currently leased and occupied by the antenna for Radio Station WJMI(FM), Jackson, MS.

While WAPT-DT is currently operating its DTV facility at maximum permissible power from the HAAT and side-mounted antenna authorized in its STA, the present operation results in a substantial decrease in its digital signal coverage area compared to its future maximized facility. As previously submitted to the Commission, WAPT-DT's present STA operation is predicted to provide service to 684,668 people, while its future operation is predicted to provide service to 738,079 people. *See* Hearst-Argyle Supplement to Maximization Waiver Request, Engineering Statement, MB Docket No. 03-15 (July 1, 2005).

Thus, absent grant of the instant waiver request to prevent signal testing under SHVERA, WAPT-DT is in jeopardy of losing service to 53,411 people who may otherwise be eligible to receive service from a distant network affiliate.

Hearst-Argyle is simply unable to proceed with construction of its maximized facility because WJMI(FM) has refused to remove its FM antenna until the end of its lease, which will terminate prior to the end of the DTV transition. Hearst-Argyle is, of course, dedicated to digital television and will be able to complete installation of its maximized DTV facility as soon as WJMI(FM) removes its antenna from Hearst-Argyle's tower.

Accordingly, because WAPT-DT experiences a substantial decrease of 53,411 people in its digital signal coverage area due to the present side-mount installation of its DTV antenna, WAPT-DT satisfies the waiver criterion of **Section 339(a)(2)(D)(viii)(IV)** of the Act.

Ms. Marlene H. Dortch
November 29, 2005
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For the reasons stated herein, Hearst-Argyle requests a waiver to prohibit digital signal testing under SHVERA. If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

A handwritten signature in black ink, appearing to read "David Kushner", with a long horizontal flourish extending to the right.

David Kushner
Coe W. Ramsey
*Counsel to WAPT Hearst-Argyle
Television, Inc.*

cc: Via Hand-Delivery
Nazifa Sawez
Federal Communications Commission
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